

Mr Philip Spann
IP Australia
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Woden ACT 2606
Via email: philip.spann@ipaustralia.gov.au

10 August 2015

Dear Mr Spann,

Defence Trade Controls Act 2012

The Intellectual Property Committee of the Business Law Section of the Law Council of Australia (**IPC**) appreciates this opportunity to provide you with a brief outline of a concern raised at the IPC's last meeting on 5 August 2015. The concern raised relates to design applications in the context the *Defence Trade Controls Act 2012* (Cth).

The IPC notes that the Defence and Strategic Goods List defines "Technology" as follows:

"Technology" (GTN NTN All) means specific information necessary for the "development", "production" or "use" of a product. This information takes the form of 'technical data' or 'technical assistance'. Controlled "technology" for the Dual Use List is defined in the General Technology Note and in the Dual Use List. Controlled "technology" for the Munitions List is specified in ML22.

- N.B. 1: 'Technical assistance' may take forms such as instruction, skills, training, working knowledge and consulting services and may involve the transfer of 'technical data'.
- N.B. 2: 'Technical data' may take forms such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, read only memories".

There is a specific exemption for patent applications, namely "the minimum necessary information for patent applications".

It is unclear if the DTCA intends that design applications are caught by the definition of "Technology Data". It is possible that they are included, as the definition is inclusive and specifically mentions eg blueprints, plans, diagrams, engineering designs etc.

To be caught by the provisions, the design would need to disclose “specific information necessary for the development or use of a product”. This may be assessed on a case by case basis, but there is some prospect that some designs would be caught by this requirement.

If design applications are caught by the DTCA provisions, then there is a case for expanding the exclusion to also exclude design applications: “the minimum necessary information for patent or design applications”.

If you would like to discuss this matter in further detail, please contact Grant Fisher at Grant.Fisher@ashurst.com.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Keeves', with a long horizontal flourish extending to the right.

John Keeves, Chairman
Business Law Section